

1  
2  
3  
4  
5  
6  
7 ESTATE OF DECEDENT LOLOMANIA  
8 SOAKAI, et al.,

9 Plaintiffs,

10 v.

11 CITY OF OAKLAND, et al.,

12 Defendants.

13 Case No. 23-cv-00381-SK

14  
15 **ORDER GRANTING MOTION TO**  
**DISMISS WAIVED CLAIMS**

16 Regarding Docket No. 91

17 This matter comes before the Court upon consideration of Defendants' motion to dismiss.  
18 The Court deems this matter suitable for disposition without a hearing pursuant to Civil Local  
19 Rule 7-1(b), and VACATES the September 15, 2025 hearing. Having carefully considered the  
20 parties' papers, relevant legal authority, and the record in the case, the Court hereby GRANTS  
21 Defendants' motion for the reasons set forth below.

22 **BACKGROUND**

23 Plaintiffs filed their initial complaint on January 25, 2023, asserting federal claims under  
24 42 U.S.C. § 1983 and state-law claims for negligence, wrongful death, violations of the Bane Act,  
25 and negligent infliction of emotional distress. (Dkt. No. 1.) On April 3, 2023, Defendants filed a  
26 motion to dismiss all of Plaintiffs' claims. (Dkt. No. 11.) On April 17, 2023, instead of filing an  
27 opposition to Defendants' motion, Plaintiffs filed an amended complaint, asserting federal claims  
28 under Section 1983 and asserting only one state-law claim under the Bane Act. (Dkt. No. 17.) On  
November 28, 2023, the Court granted in part and denied in part motions related to Plaintiffs'  
amended complaint and provided Plaintiffs with leave to amend their Section 1983 claim against  
the City and their California Bane Act claim. (Dkt. No. 74.) Plaintiffs further amended their  
complaint on March 26, 2024, asserting a claim under Section 1983 and state-law claims for

1 negligence and wrongful death. (Dkt. No. 81.) Defendants now move to dismiss Plaintiffs' state-  
2 law claims for negligence and wrongful death on the ground that Plaintiffs waived those claims by  
3 failing to include them in their First Amended Complaint.

#### 4 ANALYSIS

5 Defendants argue that Plaintiffs, by failing to replead their state-law claims for negligence  
6 and wrongful death in their First Amended Complaint, Plaintiffs voluntarily waived those claims.  
7 The Court agrees.

8 In *Lacey*, the Ninth Circuit stated that for claims that were dismissed with leave to amend,  
9 it would consider such claims waived if they were not replied. *Lacey v. Maricopa Cnty.*, 693 F.3d  
10 896, 928 (9th Cir. 2012). “Although *Lacey* addressed the waiver of rights on appeal, district  
11 courts have extended the reasoning of the decision to apply to waiver of causes of action in the  
12 district court when claims could have been pled in a subsequent complaint but were voluntarily  
13 withdrawn.” See *Heath v. Google LLC*, 2018 WL 398463, at \*3 (N.D. Cal. Jan. 12, 2018) (citing  
14 *Philips v. Ford Motor Co.*, 2015 WL 4111448, at \*6 (N.D. Cal. July 7, 2015); *Gazzano v. Stanford*  
15 *Univ.*, 2013 WL 2403646, at \*4 n. 31 (N.D. Cal. May 31, 2013); *Westley v. Oclaro, Inc.*, 2013 WL  
16 2384244, at \*11 (N.D. Cal. May 30, 2013)); see also *Robles v. Cnty. of San Diego*, 2025 WL  
17 1811816, at \*2 (S.D. Cal. June 30, 2025); *Ward v. California*, 2023 WL 3590685, at \*2 (N.D. Cal.  
18 May 22, 2023); *LBF Travel Mgmt. Corp. v. Derosa*, 2022 WL 3588926, at \*7 (S.D. Cal. Aug. 22,  
19 2022); *Verbick v. Movement Tech. Co., Inc.*, 2022 WL 20140922, at \*2 (S.D. Cal. Aug. 11, 2022);  
20 *Underwriters at Lloyd's v. Abaxis, Inc.*, 2020 WL 1677341, at \*4 (N.D. Cal. Apr. 6, 2020); *Fodrey*  
21 *v. City of Rialto*, 2019 WL 8509654, at \*4 (C.D. Cal. Dec. 20, 2019); *Camp v. Nupp*, 2016 WL  
22 9076479, at \*3 (C.D. Cal. Oct. 18, 2016).

23 Plaintiff points to a few cases finding that *Lacey* was limited to addressing waiver of rights  
24 on appeal and thus, inapplicable to waiver of claims in district court. However, the vast majority  
25 of cases hold that failure to replead claims that were not dismissed with prejudice results in a  
26 waiver of those claims. Notably, in one case finding voluntarily dismissed claims were not  
27 waived, there was an intervening change in law that the court found justified the amendment.  
28 *Philips v. Ford Motor Co.*, 2016 WL 1745948, \*11 (N.D. Cal. May 3, 2016). That same court

1 previously held that claims were waived when there was not a justifying reason for their omission.

2 *See Philips*, 2015 WL 4111448, at \*6.

3 Notably, here, Plaintiffs failed to include their state-law claims for negligence and  
4 wrongful death then they filed their First Amended Complaint. Plaintiffs do not provide any  
5 reason for why they omitted those claims in their First Amended Complaint or why, almost one  
6 year later, they repled them in their Third Amended Complaint, such as recently discovered facts  
7 or an intervening change in law. Absent any justification for their delayed attempt to replead their  
8 dismissed claims, the Court finds that Plaintiffs waived them when they voluntarily dismissed  
9 them in response to a pending motion to dismiss. Accordingly, the Court GRANTS the motion to  
10 dismiss.

11 **CONCLUSION**

12 For the foregoing reasons, the Court GRANTS Defendant's motion to dismiss Plaintiffs'  
13 state-law claims for negligence and wrongful death.

14 **IT IS SO ORDERED.**

15 Dated: September 5, 2025

16   
17 SALLIE KIM  
United States Magistrate Judge